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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--x

ERVING SUAREZ

Plaintiff

v.

COMPLAINT
Index No.

JURY TRIAL DEMANDED

EMMANUEL VANDOULAKIS, Individually and YOUR WAY TRUCKING LLC

Defendants.
--x

1. Plaintiff, Erving Suarez ("Suarez" or "Plaintiff") alleges as follows:

NATURE OF THE ACTION

2. This Action on behalf of Plaintiff seeks the recovery of unpaid wages and related damages for unpaid overtime hours worked, while employed by Your Way Trucking LLC ("Your Way") and Emmanuel Vandoulakis ("Vandoulakis"). Plaintiff seeks these damages under the applicable provisions of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL").

PARTIES

3. Plaintiff Suarez, a resident of New York State, was employed as a delivery driver assistant for Defendant Your Way from January 2016 through January 22, 2017. Plaintiff was employed by Defendants Your Way and Vandoulakis during the relevant limitations periods.

4. Defendant Your Way is a New York Corporation. Defendant Your Way is a restaurant supply/delivery company, and is registered with the New York State Department of State at 140-26 Oak Street, Flushing, NY 11355.

5. Upon information and belief, Your Way has an annual gross volume of sales in excess of $500,000.00.

6. At all relevant times, Your Way has been and continues to be an "employer" engaged in "commerce" and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

7. Upon information and belief, Defendant Vandoulakis is an owner and operator of Your Way.

8. Upon information and belief, Defendant Vandoulakis exercises control over Your Way's day to day operations, including the ability to hire and fire employees and set employee schedules and employee rates of pay.

9. Defendant Vandoulakis was an employer of Plaintiff during the relevant time period.

10. All Defendants are hereinafter collectively referred to as "Defendants."

JURISDICTION AND VENUE

11. This Court has original federal question jurisdiction under 28 U.S.C. § 1331, as this case is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et*

seq. ("FLSA"). This Court has supplemental jurisdiction over the New York state law claims, as they are related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

12. Venue is proper in this District, because Defendants conduct business in this District, and the acts and/or omissions giving rise to the claims herein allegedly took place in this District.

FACTUAL ALLEGATIONS

13. Defendants committed the following alleged acts knowingly, willfully and intentionally.

14. Defendants knew that the nonpayment of overtime pay to Plaintiff would economically injure Plaintiff and violated state and federal laws.

15. Throughout the course of his employment at Your Way, Plaintiff regularly worked five (5) days per week.

16. Plaintiff worked as a delivery driver assistant for Your Way, and assisted with the delivery of food supplies to restaurants located in Manhattan, Queens and Brooklyn.

17. Plaintiff's job duties included loading and unloading supplies from the delivery truck into the restaurants, but Plaintiff never drove the truck itself.

18. Throughout the course of his employment, Plaintiff generally worked from 9:00 pm through 9:00 am, without breaks.

19. Plaintiff would begin his shifts at various food supply warehouses located in Hunts Point N.Y., where he would begin loading food supplies into the truck.

20. Plaintiff would receive supply tickets from his manager (Angel Rojas), who would meet him at the warehouses every night.

21. Plaintiff would usually be loading supplies at the warehouses from 9:00 pm until 3:00 am.

22. Once the truck was loaded with all of the supplies, usually around 3:00 am, Plaintiff and the truck driver would start making deliveries to the restaurants.

23. Plaintiff's shifts would end around 9:00 am after all the restaurants supply deliveries had been completed.

24. Throughout the course of his employment at Your Way, Plaintiff regularly worked twelve (12) hours per day.

25. Plaintiff often worked in excess of forty (40) hours per workweek.

26. Plaintiff was paid a base salary of $600.00 per week, in cash, regardless of his hours worked per week.

27. Defendants unlawfully failed to pay the Plaintiff one and one-half times his regular rate of pay for hours worked in excess of forty (40) hours per workweek.

28. Defendant Vandoulakis hired Plaintiff.

29. Defendant Vandoulakis set Plaintiff's rate of pay and schedule.

30. Defendants failed to provide Plaintiff with a written notice of his rate of pay and failed to keep proper payroll records as required under New York law.

FIRST CAUSE OF ACTION
Fair Labor Standards Act-Overtime Wages

31. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

32. The overtime wage provisions set forth in the FLSA, 29 USC §§ 201 *et seq.*, and the supporting federal regulations apply to Defendants and protects Plaintiff.

33. Defendants have willfully failed to pay Plaintiff the overtime wages for hours worked in excess of forty (40) hours in a workweek.

34. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime compensation and other wages in an amount to be determined at trial, and is entitled to the recovery of such amount, liquidated damages, attorneys' fees, costs and other compensation pursuant to the FLSA.

SECOND CAUSE OF ACTION
New York Labor Law-Unpaid Overtime

35. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

36. The overtime wage provisions of Article 19 of the New York Labor Law and its supporting regulations apply to Defendants and protect Plaintiff.

37. Defendants have willfully failed to pay Plaintiff the overtime wages for hours he worked in excess of forty (40) hours in a workweek.

38. Defendants' knowing or intentional failure to pay Plaintiff overtime wages for hours worked in excess of forty (40) hours per week is a willful violation of the New York Labor Law Article 19 § 650, *et seq.* and its supporting regulations.

39. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime compensation and other wages in an amount to be determined at trial, and is entitled to the recovery of such amount, liquidated damages,

attorneys' fees, pre and post judgment interest, costs and other compensation pursuant to the New York Labor Laws.

THIRD CAUSE OF ACTION
New York Labor Law-Record Keeping Violations

40. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

41. Defendants failed to make, keep and preserve accurate records with respect to Plaintiff, including hours worked each workday, and total hours worked each week, as required by the NYLL and its supporting regulations.

42. Defendants failed to provide Plaintiff with a written notice of rate of pay as required by NYLL § 195.

43. Defendants' failure to make, keep and preserve accurate records was willful.

44. As a result of Defendants' willful and unlawful conduct, Plaintiff is entitled to an award of damages, in an amount to be determined at trial, costs and attorneys' fees, as provided by NYLL § 198.

PRAYER FOR RELIEF

45. WHEREFORE, Plaintiff, prays for relief as follows:

   a. An award of damages, according to proof, including liquidated damages, to be paid by Defendants;

   b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and New York law;

   c. Penalties available under applicable laws;

   d. Costs of the action incurred herein, including expert fees;

e. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, New York Labor Law § 663 and all other applicable statutes;

f. Pre-judgment and post-judgment interest, as provided by law; and

g. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

DEMAND FOR JURY TRIAL

Plaintiff on hereby demands a jury trial on all causes of action and claims with respect to which he has a right.

Dated: New York, New York
April 24, 2017

Respectfully submitted,

The Klein Law Group P.C.

By: ______________________

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